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Official Report of Debates (Hansard)

A-28

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A-28

Standing Committee on Government Agencies

Intended appointments

Comité permanent des organismes gouvernementaux

Nominations prévues

2nd Session
41st Parliament

Tuesday 12 December 2017

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41^e législature

Mardi 12 décembre 2017

Chair: Cristina Martins
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Tuesday 12 December 2017

Mardi 12 décembre 2017

The committee met at 0901 in committee room 2.

INTENDED APPOINTMENTS

MS. DAWN KERSHAW

Review of intended appointments, selection of the official opposition party: Dawn Kershaw, vice-chair and member, Licence Appeal Tribunal (Safety, Licensing Appeals and Standards Tribunals Ontario).

The Vice-Chair (Ms. Daiene Vernile): Good morning, committee members. Welcome to another session of our committee meeting today. We are going to begin our appointments with an intended appointee, Dawn Kershaw, who is nominated as vice-chair and member of the Licence Appeal Tribunal. This is the Safety, Licensing Appeals and Standards Tribunals Ontario.

I would ask you to come forward. Please take a seat and make yourself comfortable. You may begin with a brief statement if you wish. Members of each party are then going to have 10 minutes to ask you questions. Any time used for your statement will be deducted from the government side for questions. Please begin by stating your name.

Ms. Dawn Kershaw: Thank you. My name is Dawn Kershaw. Good morning, Chair, and members of the committee. First, I want to thank you for inviting me here this morning to explain to you my interest in and my professional qualifications for the intended appointment as a member and vice-chair of the License Appeal Tribunal, with cross-appointment to the other tribunals that along with the Licence Appeal Tribunal make up the Safety, Licensing Appeals and Standards Tribunals Ontario, or SLASTO. These, as you know, include the Animal Care Review Board, the Fire Safety Commission, the Ontario Civilian Police Commission, and the Ontario Parole Board.

As you may have seen, my education includes an initial two years of university at Huron College, followed by a law degree from the University of Toronto. I did things a little bit backwards, because years later I then went to Dalhousie University and obtained a master's degree in law, primarily in the area of health law. The backwards part is that I decided a couple of years later, after that, that I wanted to finish my BA, which I did in 2002.

I was called to the bar in 1991. Prior to coming to tribunal work in 2006, I practised law for approximately 15 years. I practised in a wide variety of areas, which

reflects my desire to keep learning new things. I have done work in areas including family law, personal injury law, insurance defence, oil and gas, education law, some municipal law and corporate/commercial law, among others. Some of that varied experience came from practising in the smaller town of Stratford for about four years in total.

In every area I practised, it was the clients I enjoyed the most. I enjoyed hearing their stories and figuring out a way to help them. I liked many areas of private practice, but until I came to tribunal work at the suggestion of a former colleague, I did not find my calling.

In 2006, I applied on the public service appointment website for a position as a member of the Social Benefits Tribunal. I was fortunate to be hired, and I began my public service career hearing up to 14 Ontario Disability Support Program Act and Ontario Works Act appeals a week. In that work, I have developed skills that have served me well since.

In 2012, I was appointed as a full-time vice-chair to the Human Rights Tribunal of Ontario, where I have done many mediations and hearings. I retained my appointment to the Social Benefits Tribunal as a cross-appointment, which gave me the ability to provide assistance there with new member training and human rights issues.

The clustering of tribunals, such as the Social Justice Tribunals Ontario and also SLASTO, has made cross-appointments possible and are a benefit to the tribunals that make up a cluster because they mean that tribunals have available to them members who can hear cases as required. It also means efficiencies in resources, professional development and administrative support, among others.

I am an example of cross-appointments. I recently was also cross-appointed as a part-time vice-chair to the Child and Family Services Review Board and the Custody Review Board. Those opportunities arose around the same time as this appointment to the Licence Appeal Tribunal. However, I'm looking forward to this appointment to SLASTO because it will permit me to continue to learn something new and continue to use my adjudication and mediation skills. I believe it is an exciting time to become part of SLASTO as it continues to address the accident benefits cases and looks forward to other areas of licensing that may become part of its mandate in the future.

I believe I can contribute to SLASTO's jurisprudence and processes by using the skills I have acquired in the

SJTO cluster. My 11 and a half years of tribunal work have allowed me to learn and improve skills that I believe will transfer well to SLASTO, including listening, writing, mediating and adjudicating. I have done hearings and mediations with many self-represented parties, with the use of interpreters and while implementing required accommodations for people who require those.

In addition, I place great importance on making people feel comfortable when they come before me at a mediation or hearing to permit them to participate in a meaningful and effective way. If a person feels intimidated and/or uncomfortable, they may be prevented from using our services. I try to ensure that anyone who comes before me is able to participate effectively.

It is of equal importance to me that people are able to understand what I say and what I write. I write and speak in plain language, something I began to do when, as a junior lawyer, I realized that sometimes clients did not understand lawyers because we all at times use language that to us is second nature but to a layperson is not. I will always repeat in plain language something a lawyer has said if I feel someone needs that explanation. Having said that, my use of plain language does not detract from my writing legally sound decisions.

Finally, in addition to recognizing and responding to our stakeholders, it is also important to me to recognize and acknowledge in our daily work the fact that we do not do our jobs alone. I recognize that I am part of a team with my colleagues, and just as important is that I recognize and appreciate the vital role our administrative staff plays in our daily work and know that without them we could not do our jobs as we do.

The Vice-Chair (Ms. Daiene Vernile): Thank you very much. Our first line of questioning for you comes from the official opposition: Mr. Pettapiece.

Mr. Randy Pettapiece: Good morning.

Ms. Dawn Kershaw: Good morning, Mr. Pettapiece.

Mr. Randy Pettapiece: I understand SLASTO includes the Animal Care Review Board.

Ms. Dawn Kershaw: Yes.

Mr. Randy Pettapiece: You said you worked a bit in Stratford.

Ms. Dawn Kershaw: I did.

Mr. Randy Pettapiece: That's where my riding is. Of course, you would understand, it's very heavily agriculturally based. Animal production is probably one of the highest in the province in hogs and cattle and, certainly, poultry. Your experience with the agricultural industry: Would you like to elaborate on that, in animal care?

Ms. Dawn Kershaw: I can a little bit. I was involved as co-counsel with the Walkerton inquiry. We represented a small environmental group that was interested in manure management. So we did a lot of investigation into that and also addressed some of those issues, recognizing of course that we don't want to interfere with agriculture, obviously, and we don't want to interfere with normal animal practices.

Mr. Randy Pettapiece: You have another position right now. There seem to be four different roles which are included in this whole thing. I just wonder about the time factor here: How are you going to manage your time?

Ms. Dawn Kershaw: The full-time appointment is to the Human Rights Tribunal, and that's what I do on a daily basis. The others are put into my schedule in place of a human rights day. In other words, if somebody needs me at the Child and Family Services Review Board, that day will be taken away from the human rights work that I do. I don't get paid separately for that. It's not a separate appointment, per se, in the sense that it is a cross-appointment. So it's not a case of juggling four different things; it's a case of those four different things being available to me as an adjudicator or mediator.

Mr. Randy Pettapiece: It just seems to me that, when I first looked at this, I thought, boy, this is going to be a very busy position, and you have a full-time position as it stands. I'm not questioning about the money or anything. It's just that it seems that we had a number of people come forward seeking positions to a variety of things. It gets to be down to a time-management thing. I wonder if with some of these appointments you may run into an issue of being able to handle the whole thing.

0910

Ms. Dawn Kershaw: As I understand it, I will not have my Human Rights Tribunal, CFSRB and CRB appointments. Those will be replaced by my SLASTO appointment.

Mr. Randy Pettapiece: I see. So you don't see any issue with managing these things?

Ms. Dawn Kershaw: Not at all.

Mr. Randy Pettapiece: Okay. I want to get back to the animal business. Certainly, you have some experience in, like you say, manure management or whatever.

We've had a number of cases in the riding where certain inspectors have walked into different farms or into small abattoirs. A lot of the farms have done the same thing for years and years and years, thinking they were doing the right thing. Then all of sudden they get whacked with a fine. If they don't get hit with a fine, they get hit with a summons, which leads to fines. A lot of them choose to just pay it and get on with life, because it's very expensive to go to tribunals or court in order to fight these things.

It has led to where—I don't know whether you're aware of it—in Perth county, there are no abattoirs.

Ms. Dawn Kershaw: I wasn't aware, no.

Mr. Randy Pettapiece: Small abattoirs are what I'm talking about. There are some large ones, but there are no small abattoirs. There used to be abattoirs all over Perth county. In fact, we used to use one where our farms were. It was just around the corner, and they've closed up because of this type of thing.

Ms. Dawn Kershaw: Right.

Mr. Randy Pettapiece: I wonder if you have heard of any of this going on in the riding and whether you had paid any attention to this type of thing.

Ms. Dawn Kershaw: I haven't. Unfortunately, I can't speak to that issue at all.

What I can say about tribunals, though, is that tribunals are more accessible. I understand that it does cost money. I'm not unaware of that. But the fact that there is a tribunal available that people can appeal to should be a much less expensive forum for people to bring their appeals.

Mr. Randy Pettapiece: Well, I guess whether it's much less is kind of a—how much less is too expensive for somebody else, you know?

Ms. Dawn Kershaw: Absolutely.

Mr. Randy Pettapiece: This is what we're been running into in the country. It has forced abattoirs to shut down. Like I said, there are no small abattoirs left in Perth county. Anyone in the meat business who wants to sell to the local consumer has to go out of the county somewhere to find somebody who is still in the business. I thought I would just make you aware of that and what's going on in the last little while.

Ms. Dawn Kershaw: Thank you. I appreciate that.

Mr. Randy Pettapiece: Do you have any questions?

Mr. Sam Oosterhoff: I have a couple.

The Chair (Mrs. Cristina Martins): You have about five minutes left.

Mr. Sam Oosterhoff: Perfect.

Thank you very much for coming in this morning and being willing put yourself forward for this position. It's appreciated.

Ms. Dawn Kershaw: Thank you.

Mr. Sam Oosterhoff: I just had a brief question about your additional info, where you said at the very bottom, "I would prefer not to be placed in the AABS section, although I do have past experience with accident benefits through my personal injury practice." Could you just elaborate on that a little bit—why that is?

Ms. Dawn Kershaw: Yes. When I filled in the application, I had to indicate a preference. I really don't have a preference at this point. I understand now that the bulk of the work is in the accident benefits area. I'm perfectly willing and I'm very capable of doing that. I do have experience in that area. It's old, mind you, but I certainly have worked in the area and I have no problem with working in that area at all. There was just an indication on the online form that I should indicate one or the other. Given my preference to learn new things, I'm quite happy to do both—or all, I should say.

Mr. Sam Oosterhoff: Excellent. Then I have one question that's not very related, but I'm just curious. It says that from 1984 to 1986, you did a double major honours in psychology and philosophy. In two years?

Ms. Dawn Kershaw: Yes. I didn't finish it. That's the program I was in, and I just did the two years. Then I went back later and finished a BA, which turned out to be a general BA at that point, because I didn't finish either the psychology or the philosophy.

Mr. Sam Oosterhoff: I was going to say—

Interjection.

Mr. Sam Oosterhoff: I'm working on it—that was very, very impressive.

What do you think the biggest challenge will be for you, heading into this position with your other roles, different perspectives from different tribunals and bringing that experience into this tribunal? What do you think some of the biggest challenges will be in shifting that mindset, perhaps, from some of these other areas?

Ms. Dawn Kershaw: I'm not sure that there will be a huge challenge, in the sense that tribunal work, in some senses, is very much the same. We have legislation that we need to learn. That obviously will be a challenge, because there is a lot of legislation to learn in this area. But I've learned a lot of legislation in the past and I hope to continue to do the same, obviously.

I think the actual hearings—they also have a mediation-style method of resolving cases before hearings are necessary—are very similar to what I do now, so I don't see any challenge in that respect. I've become quite comfortable doing both mediations and adjudications. I've done both, and because I was at the Social Benefits Tribunal first, I've done them in the nature of an appeal versus what I do now, which is the nature of an application. I'm quite familiar with both.

Mr. Sam Oosterhoff: Well, Dawn, thank you very much for being willing to come before us.

Ms. Dawn Kershaw: Thanks very much.

The Chair (Mrs. Cristina Martins): Any further questions? No? Okay. We'll turn it over to Mr. Gates.

Mr. Wayne Gates: Good morning. How are you?

Ms. Dawn Kershaw: Good morning, Mr. Gates. I'm well, thanks. How are you?

Mr. Wayne Gates: Good. Because my colleagues from the Liberals were missing one of my questions that I've been asking every time—this is really a question that's back by popular demand of my colleagues.

Ms. Dawn Kershaw: Is it the one I heard before we started this morning?

Mr. Wayne Gates: Have you ever donated to any political party?

Ms. Dawn Kershaw: If I have, it's not in my memory at all, so I don't believe I have.

Mr. Wayne Gates: There you go. Are you happy now? Are you guys happy? It's Christmas. I gave you a Christmas question.

One thing that you've done in your career that's always fascinated me over a long period of time, being a father who has split up with his children—I had a marriage split up. In our office, we gets lots of calls around family law, so I'd just like to know: With your experience, what do you think of joint physical custody in family law?

Ms. Dawn Kershaw: My family law experience is so old that I would hate to actually comment on it at this point. My family law experience goes back to the early 1990s. I did a little bit more when I went back to Stratford, but I didn't do a whole lot there.

Mr. Wayne Gates: Okay. Just in fairness: My split-up goes back to the 1990s, and one of the things that I thought at that time, and I still feel the same way, is that one way to keep both the father and the mother equally involved with the children was joint physical custody. It

really came out of California. I thought I'd ask that question, because it's still something that I feel strongly about that I think would really help our kids as we move forward.

Ms. Dawn Kershaw: I can understand that.

Mr. Wayne Gates: Before I get into your human rights experience—which is extensive, I can see—there's the animal review part of this. We've had an incident—not in my riding, actually, but in Mr. Bradley's riding—where we had a veterinarian who abused the animals. I've always felt like our pets are like our children. We love them almost the same way. He was actually charged. He was punching the dogs. He was banging cats against a wall. If you came across something like that, how would you handle it?

In this case, he has been able to go back and open his practice again. This case has gotten right across the country, right across the States. If you came across that, what would be your feeling? Should he be allowed to go back, or should he have his licence taken away?

I'm working on doing some legislation around it, but I just thought it's a fair question.

Ms. Dawn Kershaw: I think my personal feelings and what the law says are two different things. In my professional work, I can't apply my personal feelings to it; I have to apply what the law says. If I were in that situation, obviously, I would have to review what the law says—which I don't know at this point, and I will learn—and I would have to apply that.

Mr. Wayne Gates: If you get a chance, maybe look it up. His name was Dr. Rekhi, on Welland Avenue in St. Catharines. Take a look at the case, because it's actually very heartbreaking, to tell you the truth.

Ms. Dawn Kershaw: Sure, I will.

Mr. Wayne Gates: The other thing that I was—well, not necessarily fascinated with—was the mediation experience. It's quite interesting, as you know. Maybe just explain: I show up in your office, and I don't have a lawyer—maybe go through that process on mediation and how important a role that plays, particularly with people who don't have lawyers and no advice.

Ms. Dawn Kershaw: As a mediator at the Human Rights Tribunal, we often have people show up without representation, which means we need to deal with them in a particular way. That doesn't mean giving them advice, because that goes beyond what we're mandated to do, but it does mean explaining the law to them, explaining the process to them and doing that in language that they can understand.

It also, as I said in my opening statement, means making them comfortable, because if they're not comfortable, they're not going to be able to participate. It's much like if I come here today and I'm so nervous that I can't speak to you; you're not going to get much out of me. But you've made me feel comfortable, and I try to very much do that right from the beginning.

That can take many forms. There are many ways to make people feel comfortable, and not everybody is the same, so really, you have to read those people. You have to speak to those people and find out what it is that they need in order to make themselves comfortable.

I had someone last week in a mediation who had her dog with her. That is perfectly fine. It's a perfectly acceptable way to do things, and I have no objection to however people need to get through their process, or can get through the process, because it's vital that they do. It's my role to help people do that, feel comfortable, and to explain the law to them, assist them when they do get an offer from the other room—because oftentimes the other room does have a lawyer—and for me to explain to them what the law says, what their range of expectations might be and for them to make that decision; not for me to do.

0920

Mr. Wayne Gates: The other part you did is—you said you write decisions. Do you write decisions for arbitration as well or just mediation?

Ms. Dawn Kershaw: Not for arbitration—we have hearings. These are applications people have brought for human rights hearings. We write decisions, and you will see many of my decisions on CanLII. I hope they're understandable to people, because I do try.

Mr. Wayne Gates: Well, you said you write, in your opinion, very good decisions—

Ms. Dawn Kershaw: In my opinion.

Mr. Wayne Gates: —very thoughtful decisions. To get to a decision—obviously, it might depend on the case—how long would it take you to write a decision?

Ms. Dawn Kershaw: It really depends. I've written five-page decisions and I've written 55-page decisions, so it's really hard to say. Some of them don't come as easily as others, as you can imagine.

Mr. Wayne Gates: What's the longest?

Ms. Dawn Kershaw: It might be the 55er. That was a long one.

Mr. Wayne Gates: How long would that have taken you?

Ms. Dawn Kershaw: The difficulty is, you don't have a block of time to write. What you're doing is, you're having hearings, you're having mediations and you're writing in between. So it's very difficult for me to give you a time estimate.

Mr. Wayne Gates: A lot of work.

Ms. Dawn Kershaw: It's a lot of work.

Mr. Wayne Gates: Okay. I understand that you have previous experience with the Human Rights Tribunal. I can imagine what a particularly interesting and difficult job it is. How would you use those skills as a board member for the Licence Appeal Tribunal?

Ms. Dawn Kershaw: Again, I've developed those mediation skills, which I think are helpful because I know there is a process at the Licence Appeal Tribunal where they have some—they may not call it mediation, but they do have a mediation process where they do that ahead of a hearing. If people can solve things that way, it's a much better process. It's easier on everyone. It's cheaper for everybody.

Then also, over the years, I've obviously developed a lot of adjudicative skills as well. The Human Rights Tribunal has brought me even more skills than I had before at the Social Benefits Tribunal simply because we

do have a lot of self-represented people, so we also have something called active adjudication, which means again we're explaining the law, we're explaining what we need and we're asking questions when we need to. Those are all things I think I can bring to SLASTO.

Mr. Wayne Gates: I've asked this question previously, but with your background in human rights and the very recent concerns regarding the conditions at a particular jail, I think it's important to come back to it. I'm sure you're aware of the past issues facing the Thunder Bay jail and the prolonged use of solitary confinement, particularly with aboriginal inmates.

I understand it doesn't directly relate to your position within the Licence Appeal Tribunal, but I was hoping you may be able to discuss your feelings towards the incidents and responses of governments or the obligation of governments to make sure that's not happening.

Ms. Dawn Kershaw: Again, I'm not sure that's my role this morning to do that. Again, that goes back to my personal feelings versus my professional opinions.

Ms. Daiene Vernile: That's outside the scope.

Mr. Wayne Gates: Do you want to go through the Chair for a change?

Interjection.

Mr. Wayne Gates: Are you questioning, or are you just talking?

The Chair (Mrs. Cristina Martins): Please continue. You've got about a minute—almost two minutes.

Mr. Wayne Gates: Anyway, I believe it is within the role and the scope of this, seeing that you are in human rights. It is an incredibly important issue for all Ontarians to understand that inmates are being put in solitary confinement, and with your expertise, you must have some form of opinion or have been faced with those types of situations. It obviously is a human rights issue, and a violation, in my heart.

Ms. Dawn Kershaw: I agree with you; it's a very important issue. I also believe it's beyond what I should speak to today in my professional role—

Mr. Wayne Gates: I'm not so sure that's accurate. I'm not sure you're accurate, but seeing my time is up, I'll let it go.

The Chair (Mrs. Cristina Martins): You still have a minute.

Mr. Wayne Gates: I'm fine. It's all right.

The Chair (Mrs. Cristina Martins): Thank you, Mr. Gates. We will now turn it over to the government side. You have four minutes and 35 seconds. Mr. Qaadri.

Mr. Shafiq Qaadri: First of all, welcome, Ms. Kershaw, on behalf of the government. I think all of us can see from reading your CV that you're eminently qualified, with triple degrees. You've even inspired Mr. Oosterhoff to continue his undergraduate studies, so we feel inspired.

I'd like to thank you, Mr. Gates, for resurrecting your age-old question about donations. We were in fact missing it, so I thank you for accepting that prompt.

You're the second person to come before this committee with a master's in health law. Is that a pattern that I should start recognizing? What is that all about?

Ms. Dawn Kershaw: I don't know.

Mr. Shafiq Qaadri: How do you think your master's in health law will help influence and inform your decisions here?

Ms. Dawn Kershaw: It's older, so I'm not sure how it will, but what I can say is that I did other things as well as the health part. I actually took a medical ethics course while I was out there. I also did an alternative dispute resolution course as well and a women-in-the-law course. I made sure that the medicine wasn't the only thing addressed, but in the context of ethics, I think that will certainly help.

Mr. Shafiq Qaadri: In your commentary here you've said, "I have a calm demeanour and the ability to make people feel comfortable in my hearing room...."

Ms. Dawn Kershaw: How am I doing?

Mr. Shafiq Qaadri: I think we would accept that and attest to that.

You mentioned here that you are quite comfortable working with an interpreter. Is that an interpreter of language or an interpreter in the sense of legalese? What does that mean?

Ms. Dawn Kershaw: I meant interpreter of language, but I've also worked with hearing-impaired interpreters as well.

Mr. Shafiq Qaadri: I see.

I think, as I say, unless my colleagues have questions, we're honoured to have you, and thank you for bringing to bear such a remarkable skill set, whether it's hosting Japanese exchange students, rowing, being a warden of your local church or a soccer coach. It's kind of the ideal picture-perfect life. Thank you very much for coming forward.

Ms. Dawn Kershaw: Thank you very much. I appreciate it.

The Chair (Mrs. Cristina Martins): Are there any further questions from the government side? Seeing that there are no more questions, I want to thank you, Ms. Kershaw, for being here today. You may step down.

Ms. Dawn Kershaw: Thank you very much.

The Chair (Mrs. Cristina Martins): We will now look for concurrence.

We will now consider the concurrence for Ms. Dawn Kershaw, nominated as vice-chair and member, Licence Appeal Tribunal (Safety, Licensing Appeals and Standards Tribunals Ontario). Mr. Qaadri, please.

Mr. Shafiq Qaadri: I move concurrence in the intended appointment of Dawn Kershaw, nominated as vice-chair and member, Licence Appeal Tribunal (Safety, Licensing Appeals and Standards Tribunals Ontario).

The Chair (Mrs. Cristina Martins): Thank for moving the concurrence, Mr. Qaadri. Is there any discussion? Seeing that there is no discussion, we'll go to a vote. All in favour? Opposed? Congratulations; the motion is carried.

Seeing that there are no more appointees for today, this committee is adjourned.

The committee adjourned at 0927.

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